Cr.A.NO. 257/04 (2)

APPEAL OF PRISONER

CF0000066574

High Court of Chhattisgarh
BILASPUR
09 MAR 2004
Reg. No. 62
Receipt Clerk
High Court, Bilaspur

No. 399/04 Name राजेश राजवाड़े

Father's name रामनाथ

Residence ग्राम - बिनकरा थाना लखनपुर Age 25 वर्ष

Sentenced सत्र प्र०क्र० 145/03 धारा 302 IPC on 25-2-04

Under section आजीवन कारावास by माननीय न्यायालय - सत्र न्यायाधीश, अम्बिकापुर सरगुजा (छ.ग.)
अर्थदण्ड 500/- या 1 माह

it is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appeliate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with-in seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practiotioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1. Date of Application for copy of Judgement 25-2-2004
2. Date of which copy received 27-2-2004
3. Date on which appeal sent 3-3-2004
4. Whether the prisoner wished to be represented or not-~~Yes~~/No.

No. 399/2004 Name राजेश राजवाड़े S/O रामनाथ

Continued in केन्द्रीय Jail अम्बिकापुर

No. 1104 Dated 4/3/04 199

Forward to the ~~CHIEF JUDICIAL MAGISTRATE~~ एडिशनल (ज्यूडिशियल) रजिस्ट्रार उच्च न्यायालय छ.ग. बिलासपुर
to gather which a copy of order passed in the case for favour of transmission to the proper Appelliate Court.

संलग्न - निर्णय प्रतिलिपि 6 (छः) पन्ने ।

Superintendent

Superintendent
Central Jail, Ambikapur

Date of receipt in C.J.M's Office

Date of receipt record to accompany

Memo of Appeal of the Appeliate Court

No. Dated 199

Forwarded to the

C.J. Magistrate

Date of receipt in Appeliate Court

//SURGUJA TY.//

* * *

XI-HC-78

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..G.A.257/.. **सन् 2004**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

13-2-2007

Mr. Abhay Tiwari, counsel for the appellant.

Mr. M.P.S. Bhatia, Panel Lawyer for the State/respondent.

While hearing on M.(Cri.)P No.989/2005, application for suspension of sentence imposed and grant of bail during the pendency of this appeal, learned counsel for the appellant submitted that the accused is in detention since 12-12-2002, thereby he is in detention for more than four years one month therefore, instead of hearing this M.(Cri.)P., the appeal itself may finally be heard, as it is a small matter, to which learned Panel Lawyer for the State/respondent has no objection. Therefore, with the consent of counsel for the parties, the appeal is heard finally.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, J.: -

This appeal is directed against the judgment of conviction and order of sentence dated 25-2-2004 passed by the Sessions Judge, Surguja (Ambikapur) in Sessions Trial No.145/2003 whereby learned Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life

P.T.O.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

and pay a fine of Rs.500/-, in default of payment of fine to further undergo S.I. for one month.

Case of the prosecution, in brief, is that on 10-12-2002 at about 3 p.m. some altercation took place between the accused/appellant and his father Ramnath (since deceased) and in that process the accused assaulted his father. On the next day, the accused went to Dr. Prem Singh Marco and requested him that he has assaulted his father, therefore, he should give medical treatment to his father. On the request of the accused, Dr. Prem Singh Marco (PW-1) went to the house of the accused and started treatment, however, Ramnath succumbed to the injuries sustained by him within half an hour. The matter was reported by Dr. Prem Singh Marco under Ex.P-1 to Police Station Lakhanpur and merg intimation Ex.P-3 was given based on which F.I.R. Ex.P-2 was registered. The Investigating Officer left for the scene of occurrence. After giving notice Ex.P-10 to the Panchas, he prepared the inquest Ex.P-11 on the body of Ramnath. The body of Ramnath was sent to Community Health Centre, Lakhanpur for post-mortem examination where Dr. P.S. Kerketta (PW-2) conducted post-mortem, prepared the post-mortem report Ex.P-4 and opined that the cause of death is intracranial haemorrhage causing suppression of vital function of the brain tissue.

After completion of investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Ambikapur, who in turn committed the case to the Sessions Judge, Ambikapur.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The prosecution examined 14 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that his father was a man of criminal nature, on the day of the incident, he was not at residence, he is innocent and he has been falsely implicated in the crime.

Learned Sessions Judge after hearing counsel for the parties as also on perusal of the record, convicted and sentenced the accused as aforementioned.

We have heard Mr. Abhay Tiwari, learned counsel for the appellant and Mr. M.P.S. Bhatia, learned Panel Lawyer on behalf of the State/ respondent.

Having heard learned counsel for the parties, we have perused the judgment and evidence available on record. In this case, all the eyewitnesses have turned hostile and they have not supported the prosecution case. Conviction rests on the testimony of Dr. Prem Singh Marco (PW-1), Assistant Surgeon, Primary Health Centre, Gumgara Kala, before whom the accused made extra judicial confession. In order to convict the accused based on the extra judicial confession, requirement of the law is that the extra judicial confession must be voluntary, true and prompt. Dr. Prem Singh Marco (PW-1) has stated in his evidence that on 11-12-2002, the accused came to him and said that he has assaulted his father who is serious, please come, see him and give treatment to him. After

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

reaching the residence of the accused, he examined Ramnath, however, within a short duration, Ramnath succumbed to the injuries sustained by him, therefore, he lodged the report Ex.P-2. In Ex.P-1, the information, based on which Ex.P-2 F.I.R. was registered, Dr. Prem Singh Marco mentioned that on 11-12-2002, at about 11.30 a.m. Rajesh (the accused/appellant) came to him in the hospital and disclosed that "yesterday at about 3 p.m. he assaulted his father as a result of which his father sustained injury on head, he is not speaking, therefore, please come and examine him", on which he went to the house of the accused, gave primary treatment to Ramnath, but after some time at about 12.30 p.m. Ramnath succumbed to the injuries sustained by him. In the cross-examination of this witness, defence has not been able to elicit any circumstance which discredits the evidence of this witness.

Dr. Prem Singh Marco is an independent witness. At the relevant time, he was working as Assistant Surgeon in Primary Health Centre, Gumgara Kala, before whom the accused made extra judicial confession, and in pursuance of that, he went to the house of the accused, saw Ramnath in injured condition, he gave primary treatment, but Ramnath succumbed to the injuries sustained by him at 12.30 p.m. Therefore, the evidence of this witness is corroborated by the circumstantial evidence available on the spot that is whatever stated by the accused to this witness was confirmed by him when he reached on the spot and saw Ramnath in injured condition. Further that while in police custody, the accused gave memorandum Ex.P-18 regarding the weapon of offence planner (रंदा) which has been kept in his house and in pursuance of that the said weapon of offence planner was

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

recovered at the instance of accused under Ex.P-19 and the same has been proved by Investigating Officer I. Tirkey (PW-14). The said weapon of offence was examined by Dr. P.S. Kerketta (PW-2) who gave his report Ex.P-7 to the effect that the injury found on the head of deceased Ramnath could be caused by the same. Therefore, from the circumstantial evidence, the extra judicial confession made by the accused before Dr. Prem Singh Marco (PW-1) is corroborated. In the circumstances, involvement of the accused in the crime in question is established.

Learned counsel for the appellant argued that deceased Ramnath was a man of criminal nature, he was in the habit of consuming liquor and quarreling with the members of the family. On the day of incident, the deceased had consumed liquor and started quarreling with his son, the accused, during that process the accused picked up the planner which was lying in the house of the accused and assaulted the deceased with the said planner. There was no intention of the accused to cause the death of his father. Therefore, offence against the accused does not travel beyond Section 304 Part-II of the I.P.C.

On the other hand, learned Panel Lawyer supported the judgment of the trial Court.

In order to appreciate the arguments advanced by learned counsel for the appellant, we have scrutinized the evidence.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Dr. Prem Singh Marco (PW-1) who went to treat injured Ramnath on the next day of the incident has stated in para 13 of his evidence that smell of liquor was coming out from the mouth of injured Ramnath. In the extra judicial confession made by the accused before this witness, the accused clearly stated that on account of quarrel between him and his father, he assaulted his father. Brother of the deceased namely, Rajnath (PW-10) has also stated in his evidence that Ramnath was in the habit of consuming liquor and quarrelling. Chhatarpati (PW-12), wife of the deceased, has also stated in her evidence that her husband was a man of criminal nature, he faced criminal trial in the cases of theft and dacoity.

Therefore, from the above evidence available on record, it can be inferred that there was some quarrel between the father of the accused (deceased) and the accused/appellant, in that process the accused picked up the planner lying in the house and attacked his father as a result of which he sustained injury on the occipital region. In the circumstances, the prosecution has not been able to establish that the accused had intention to cause the death of his father, but it can safely be inferred based on the facts and circumstances of the case that while assaulting with the planner on vital organ, the accused had knowledge that he may likely to cause the death of his father. Therefore, we are of the considered opinion that offence against the accused does not travel beyond Section 304 Part-II of the I.P.C.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	In the result, the appeal partly succeeds and the same is partly allowed. Conviction and sentence of the accused under Section 302 of the I.P.C. are set aside, instead thereof, he is convicted under Section 304 Part-II of the I.P.C. and sentenced to undergo R.I. for seven years. It is mentioned that the accused is in detention since 12-12-2002 till today, therefore, he will be entitled for set-off for the above detention period against the sentence imposed upon him. Consequently, M.(Cri.)P.No.989/2005 and I.A.No.1182/2005 stand disposed of. **Sd/-** **L.C. Bhadoo** **Judge**	**Sd/-** **Dhirendra Mishra** **Judge**

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P.T.O.